

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 71 of 1987

in

SPECIAL CIVIL APPLICATION No 182 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

J M PATEL

Versus

STATE OF GUJARAT,

Appearance:

MR GIRISH PATEL for Appellant
NOTICE SERVED for Respondent No. 1
MR JR NANAVATI for Respondent No. 5

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 11/11/98

ORAL JUDGEMENT (Per Patel, J.)

The appellant, who was serving as a Lecturer in a Government College affiliated to the Gujarat University, preferred Special Civil Application No. 182 of 1986 before this Court, seeking relief that the respondents be restrained from superannuating him on January 31, 1986 on reaching the age of 58 years as in his case the age of superannuation would be 60 years as prescribed by the Gujarat University. Learned Single Judge came to the conclusion that the appellant is a Government servant serving in a Government college affiliated to the Gujarat University, and, therefore, the date of retirement would be governed by the service conditions by which he was recruited as a Government employee. The appellant was recruited through Public Service Commission and was enjoying the status of a Government employee as a Lecturer in a College affiliated to the Gujarat university. At the stage of admission, it was pointed out to the learned Single Judge that the question raised in the petition was also raised in Special Civil Applications No. 978/85, 1046/85, 3461/85 and 3528/85. Learned Single Judge of this Court, by a detailed judgment, rejected the contentions in this behalf. Letters Patent Appeals were pending at the relevant. Learned Single Judge, giving detailed reasons, dismissed the Special Civil Application against which the present LPA is filed.

2. At the stage of admission of this LPA, the Division Bench admitted the matter and directed that the present appeal be heard along with LPAs No. 518/85, 523/85 and 524/85. The aforesaid LPAs were heard by a Division Bench of this Court on 13th August 1993. The Division Bench, after examining the scheme and considering the provisions of the ordinance under the Gujarat University Act and the Gujarat University Act, statutes, regulations and resolutions, held that the appeals are required to be dismissed. After going through the judgment of the Division Bench in the aforesaid matter, learned advocate for the appellant herein could not point out as to how the impugned judgment calls for any interference.

3. From the order passed by the learned Single Judge, it appears that the learned counsel who argued the matter before the Division Bench in the aforesaid LPAs and before the learned Single Judge fairly invited the order of dismissal.

4. In the aforesaid LPAs, the Division Bench's attention was drawn to section 33(5)(a) and (i) of the Gujarat University Act and the Division Bench observed as

under in paragraph 7 of the judgment :-

"In this connection Miss Rekha M. Doshit, learned counsel for the respondents, drew our attention to section 33 (5) (a) and (i), whereunder Government College or a College maintained by the Government has been excluded from obligations of having a Governing Body, and having the Principal and members of the teaching staff recruited through a Selection Committee. Under Section 33A, which speaks about affiliated colleges to be under the Management of Governing Bodies and having Selection Committees, a government college or college maintained by Government stands excluded. There are Ordinances made, obviously, by the Executive Council under the Act; and Ordinance 97, speaking on the subject of recruitment, has kept out of its purview government colleges or colleges maintained by the government. Ordinance 172 enacting "The College/Institution Teachers' Conditions of Service (Conduct and Discipline) Rules Ordinance, 1985 has by its very preamble, excluded from its purview Government colleges/Institutions or Colleges/Institutions maintained by the Government. Clause (15) thereof, which speaks about the age of retirement has also excluded Government Colleges. Here, we must note that there is a doubt which has not been clarified by either side as to when exactly Ordinance 172 came to be enacted. But, that does not alter the position, because even if Ordinance 172 was there earlier, it could not be availed of by the petitioners, because Government Colleges or Colleges maintained by it stand excluded from its purview as noted above. Our attention was also drawn to Section 59A, excluding the provisions of Section 51A concerning dismissal, removal and reduction and termination of service of staff of college etc. and section 52A concerning reference of dispute from recognised or approved institution or its staff members to Tribunal of Arbitration from their application to Government Colleges. There is a special enactment called "The Gujarat Affiliated Colleges Tribunal Act, 1982" and we find that section 82 has excluded the application of the provision of that statute to the employees of the College owned by the Government."

5. After discussing in detail, the Division Bench

dismissed the aforesaid LPAs. The present appeal having been ordered to be heard with the aforesaid LPAs, would have met with the same fate had it been placed before the Division Bench while disposing of the aforesaid LPAs. Even otherwise also, after hearing the arguments and after considering the judgment of the Division Bench in the aforesaid LPAs, we find no reason at all to interfere with the order passed by the learned Single Judge. The appeal, in the result, stands dismissed. No order as to costs.

csm./ -----